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Human rights situations that require the Council's attention

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Indonesia: Weak judicial system and insufficient legal aid allows for unfair trial

1. A basic requirement in ensuring justice, fair trial is largely dependent on the state of the criminal justice system in the country, particularly the effectiveness of judges and lawyers. The Asian Legal Resource Centre (ALRC) wishes to draw the attention of the UN Human Rights Council to the fact that judicial independence in Indonesia suffers. Indonesia's Judicial Commission received as many as 1,781 complaints from the public about unfair trial between January and December 2014. In addition, the Judicial Commission received 2,003 written complaints of violations of the judicial code of conduct.

2. Following such public complaints, a total of 152 judges were summoned for questioning by the Judicial Commission in 2014, of which 143 judges complied. Based upon its examination, the Judicial Commission recommended 131 judges to be examined by the Supreme Court. Of these, 96 judges received written warnings from the Supreme Court, while 22 judges were given light punishment: suspension of salary for one year, decreasing salary for maximum one year, suspension of rank promotions for maximum one year, suspension of official functions for minimum three months and maximum six months. Thirteen judges received heavier punishment: suspension of official functions and salary for one year. When the Supreme Court deems it necessary, a panel of honorary judges tries judges. Between 2009 and 2014, however, only 37 judges have been thus tried.

3. It is the view of the ALRC that the Judicial Commission's mandate should be strengthened so it can be involved in the Supreme Court examination process, rather than merely issue recommendations. Law No. 18 of 2011 on the Judicial Commission should be amended to this effect. Furthermore, the Judicial Commission and the Supreme Court need to have a clear understanding to ensure that recommendations from the Judicial Commission are followed up with transparency and accountability.

4. The ALRC would also like to draw the Human Rights Council's attention to grave problems in the area of corruption cases, human rights cases, and the trial of prominent human rights defender, Munir Said Thalib. Indonesia is facing a serious problem concerning the independence of judges within its anti corruption court. The controversial verdict decided by the South Jakarta District Court Judge Sarpin Rizaldi for instance, in a pretrial hearing between the Corruption Eradication Commission (KPK) and General Budi Gunawan, appointed candidate of the Chief of National Police, is a clear example of this. Judge Sarpin stated, "the naming of the applicant (Budi Gunawan) [*as a suspect of corruption*] by the defendant (KPK) is illegitimate and has no legal basis." Indonesia's criminal law, however, does not prevent authorities from naming suspects in pretrial hearings. Due to this verdict, the KPK cannot proceed with its investigation on Budi Gunawan.

5. The Indonesian Corruption Watch (ICW), a national NGO, reported that in 2014 only four corruption suspects were sentenced with heavy punishment. Of the total 265 suspects, ICW emphasized that 241 were given light sentences of one to four years of imprisonment, while 20 other suspects were released without any clear reason.

6. During his election and inauguration, President Joko Widodo pledged that addressing human rights violations would be a priority for his government. In particular, he emphasized putting an end to impunity and processing past human rights cases, such as the May 1998 uprising, Tanjung Priok killings in 1984, and the 1965 tragedy. In accordance with Indonesian law, human rights cases are to be taken up in specific human rights courts. To realize his pledge, President Widodo will have to address the problems with the country's human rights court, such as the lack of knowledgeable and experienced judges and prosecutors, and the lack of oversight that allows defense lawyers to bribe witnesses and victims. Tanjung Priok's human rights court, from 2003 to 2006, clearly revealed monetary transactions between lawyers and witnesses. The lawyers bribed witnesses and victims to change their testimony in court, with no suspicion or questioning from the judges.

7. President Widodo's pledge towards human rights and ending impunity should also look into the case of human rights defender Munir Said Thalib. The trial for his assassination, involving former military officials and intelligence agencies, was clearly hampered by the lack of government support. No guarantees of protection were provided for the judges, and enough effort was not made to ensure that all relevant evidence from state institutions could be presented in court. The failure of the court to bring in key witness Mr. Budi Santoso in the prosecution of former Deputy of National Intelligence Agency, Mr. Muchdi PR, resulted in the release of Muchdi. Budi was an officer at the Indonesian Embassy in Pakistan; cooperation between the court and the government could have brought him to Indonesia for testimony.

8. The ALRC would also like to raise concerns regarding the case of Mr. Etis Wenda, an indigenous Papuan, detained for his alleged involvement in separatist activities. When he was visited in Abepura prison recently, he stated that throughout the process of his arrest, detention, prosecution, and his finally being sentenced for life, he did not have access to a lawyer. Moreover, being unable to read, the law enforcement agencies did not provide him any assistance to review the Police Interrogation Report. This is a flagrant violation of the right to fair trial and justice, and it is also indicative of the treatment meted out to Papuans and other minorities in the country.

9. Another violation of the right to have a lawyer is present in the books in the form of Article 56 of the Indonesian Law of Criminal Procedure, which only obligates the government to provide lawyers for those liable to imprisonment of five years or more. According to national NGO KontraS, the absence of lawyers in the police examination process leads to torture and other police abuse. KontraS reported 34 cases of police torture between June 2013 and May 2014, which aimed to obtain confessions from alleged suspects during the examination process.

10. Under Law No. 16 of 2011, on legal aid, the government granted a 50 billion Indonesian rupiah budget for legal aid in 2015. This amount however, is not enough to cover more than 200 legal aid providers running the program. Furthermore, the majority of legal aid providers work in the capital cities of provinces, with only a few practicing in remote areas. Not only is the legal aid program thus failing to provide legal aid for poor people in remote areas, but it also does not provide legal aid for vulnerable groups such as women and children, people with disability, and indigenous people, unless they fall under the category of "economically poor".

11. In view of the above, the ALRC requests the Human Rights Council to urge the Indonesian government to improve its judicial and legal aid system. In particular, the government should:

a. Comprehensively review the judicial system and strengthen oversight at every stage of investigation;
b. Amend Law No. 18 of 2011 to strengthen the mandate of the Judicial Commission, and urge the Supreme Court to examine Judicial Commission recommendations with the utmost gravity and consideration;
c. Increase budgetary allocations for the Judiciary, to allow for better training and compensation of judges, which will refine their skill and lower chances for corruption;
d. Amend Law No. 16 of 2011 to provide legal aid not only for economically disadvantaged persons, but also vulnerable groups such as women, minorities, and others seeking justice.